

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE
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April 28, 1997

Paper No. 14
EWH/KTP

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Synthetic Industries, Inc.

Serial No. 74/600,065

Rodney L. Skoglund of Renner, Kenner, Greive, Bobak, Taylor
& Weber for Synthetic Industries, Inc.

Adam C. Striegel, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Hanak, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Synthetic Industries, Inc. (applicant) seeks
registration of EC-DESIGN in typed capital letters for
"computer software programs for the design of geosynthetics
including geotextiles and erosion control materials." The
intent-to-use application was filed on November 17, 1994.

The Examining Attorney refused registration pursuant to
Section 2(e)(1) of the Lanham Trademark Act on the basis

that applicant's mark is merely descriptive of applicant's goods.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

The position of the Examining Attorney is summarized as follows at page 3 of his brief:

Unquestionably, if the applicant had applied to register the mark EROSION CONTROL DESIGN instead of EC-DESIGN for the same goods, the EROSION CONTROL portion of the mark would be merely descriptive, as would the term DESIGN. Similarly, because EC is a recognized acronym for "erosion control" within the relevant trade or industry, use of the acronym EC is as descriptive as use of the words EROSION CONTROL when used on or in connection with applicant's goods.

Applicant advances a number of arguments as to why its mark EC-DESIGN is not descriptive of its goods. One argument advanced by the applicant is that the Examining Attorney has simply failed to prove that the initialism EC is understood by purchasers of applicant's goods (or indeed, anyone) to mean "erosion control." (Applicant's brief page 5; applicant's reply brief page 3). Applicant states that "initials cannot be considered descriptive unless they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith." Modern Optics, Inc. v. Univis Lens Co., 234

F.2d 504, 110 USPQ 293, 295 (CCPA 1956) (applicant's emphasis).

Because we find that the Examining Attorney has simply failed to establish that the initialism EC, when used in connection with applicant's goods, is substantially synonymous with the words "erosion control" we reverse the refusal to register.

In support of his contention that the initialism EC is recognized as meaning "erosion control," to purchasers of applicant's goods, the Examining Attorney has made of record only two items of evidence: (1) an excerpt from the Acronyms, Initialisms & Abbreviations Dictionary (18th edition 1994), and (2) an excerpt from one ten year old Associated Press story which appeared on various wire services and in the March 27, 1986 edition of The New York Times.

Considering first the dictionary evidence, we note that this specialized dictionary has over 250 listings for the initialism EC. One of these 250 listings of EC is for "erosion control." However, there are several other listings of EC which have meanings which plausibly could likewise be applicable to applicant's goods. By way of example only, these other meanings of EC include environmental control, environmentally correct, environment condition, and engineering construction. Thus, the very dictionary relied upon by the Examining Attorney demonstrates that even when the initialism EC is used in

conjunction with applicant's goods, there is doubt that EC is "substantially synonymous" with the words "erosion control."

Considering next the one ten year old excerpt from the Associated Press, it reads in its entirety as follows: "The purpose of each project is shown by the following abbreviations: CMF -- commercial fishing; DDN -- deep draft navigation; EC -- erosion control; EQ -- environmental quality; FDP -- flood damage prevention; HYD -- hydroelectric power; IRR -- irrigation; LV -- lava flow..."

Two comments are in order. First, given the fact that the very dictionary relied upon by the Examining Attorney demonstrates that the initialism EC has at least several different possible meanings which are relevant to applicant's goods, it would be totally wrong to conclude that but one excerpt from a ten year old story is sufficient in and of itself to establish that the initialism EC is "substantially synonymous" with the words "erosion control."

Second, when one examines this ten year old excerpt, we cannot tell, without the full text, whether or not the projects being referred to were performed by one company which had established its own internal, personalized set of initialisms or whether the term, "EC" does in fact signify "erosion control" to those in the field of geosynthetics design. The excerpt, absent the context in which it appeared, simply lacks probative value. For example, we note that the final initialism in the excerpt is "LV -- lava

flow." However, in reviewing the specialized dictionary relied upon by the Examining Attorney, we note that there is no listing of LV as meaning "lava flow."

Decision: The refusal to register is reversed.

E. W. Hanak

T. J. Quinn

G. D. Hohein
Administrative Trademark
Judges, Trademark Trial
and Appeal Board